

Deidre Chew Kim Li v Alston Chin Kian Seng

HIGH COURT (KUCHING) — DIVORCE PETITION
NO KCH-33-262/12 OF 2021
ALEXANDER SIEW JC
6 JANUARY 2023

Family Law — Divorce — Application for interim maintenance — Financial obligation — Petitioner claimed for interim orders pending disposal of divorce petition — Orders for petitioner to be entitled to stay at matrimonial home and continued use of Mercedes Benz Motorcar — Matrimonial home belonged to respondent's father and Mercedes Benz Motorcar belonged to company of which respondent's parents were directors — Whether injunction could be issued against non-parties — Whether petitioner would be 'left high and dry' and 'in immediate need of financial support' without interim maintenance

The petitioner, who is an accountant by training, with a Degree in Commerce from Australia National University and accredited as a Certified Practising Accountant or CPA with a monthly income of at least RM4,000 to RM5,000 as an insurance agent and respondent, an engineer at Bormal Engineering, were married in December 2018. The couple had no children. After marrying, the parties lived at a condominium in Kuching belonging to the respondent's father ('the condominium'). By December 2020, two years into the marriage, the relationship between the parties had deteriorated to the point where the respondent moved out of the condominium. The petitioner then filed the instant divorce petition and a notice of application for ancillary relief vide encl 5 ('the application'), applying for interim orders pending the hearing and disposal of the instant petition, inter alia, that: (a) the petitioner be entitled to remain and/or stay in the condominium; and (b) the petitioner be entitled to use the Mercedes Benz Motorcar which was provided for by the respondent from the time of the said marriage. According to the petitioner, the condominium was the couple's matrimonial home from the start and the respondent had provided a Mercedes Benz motorcar for her use during their marriage. The respondent, on the contrary, did not deny the couple was living at the condominium during their marriage but stressed that the condominium belonged to the respondent's father. Similarly, the Mercedes Benz belonged to a company called Bormal Engineering Sdn Bhd ('Bormal Engineering'), of which the respondent's parents were directors. According to the respondent, the Mercedes Benz was provided to the petitioner for her use as part of the petitioner's employment at Bormal Engineering but the petitioner had now left Bormal Engineering.

A Held, dismissing application with no order as to costs:

- B** (1) The orders being applied for in respect of the condominium and Mercedes Benz, sought not only to injunct the respondent or his agents or servants but also the respondent's parents as the condominium belonged to the respondent's father and the Mercedes Benz belonged to Bormal Engineering, the respondent's parents' company. As neither the respondent's parents nor Bormal Engineering were parties to the instant litigation, as a matter of law no injunction could be issued against them and as a matter of fairness, no injunction should be issued against non-parties (see paras 21–23).
- C**
- D** (2) By virtue of s 78 of the Law Reform (Marriage and Divorce) Act 1976, the court based its assessment of any maintenance payable on the means and needs of the parties. On the facts of the case, the marriage was a relatively short duration of two years, with no children. Both petitioner and respondent are professionals, who worked in their chosen field before marriage and after getting married (engineering and accounting/tax respectively). Even if the petitioner had to find an alternative accommodation and means of transport, the petitioner had spent some years in Kuala Lumpur as a tax accountant earning not more than RM4,580 per month and she was able to maintain herself on such income during such period, she would thus be able to do the same, with a monthly income of at least RM4,000 to RM5,000 month from her work as an insurance agent, living in Kuching. The petitioner would not be 'left high and dry' and 'in immediate need of financial support' without interim maintenance from the respondent (see paras 27, 78, 80–81 & 87).
- E**
- F**
- G** (3) There was no mention in s 78 of the Law Reform (Marriage and Divorce) Act 1976 about any requirement to maintain a wife to the same standard as existed during the marriage. Further, there was no law that stipulated the parents of a husband had to continue to extend their generosity to the wife, even after the marriage had broken down. In respect of the Mercedes Benz, as it was provided by Bormal Engineering as part of the petitioner's employment, the Mercedes Benz belonged to Bormal Engineering. Given that the condominium was provided by the father or parents of the respondent and belonged to the respondent's father, in the circumstances, the court was disinclined to make any order of interim maintenance pending trial (paras 88–89 & 92).
- H**

I [Bahasa Malaysia summary]

Pempetisyen, yang merupakan seorang akauntan melalui latihan, dengan Ijazah dalam Perdagangan dari Australia National University dan diiktiraf sebagai Pengamal Akauntan Bertauliah atau CPA dengan pendapatan bulanan sekurang-kurangnya RM4,000 hingga RM5,000 sebagai ejen insurans dan

responden, seorang jurutera di Bormal Engineering, telah berkahwin pada Disember 2018. Pasangan tersebut tidak mempunyai anak. Selepas berkahwin, mereka tinggal di sebuah kondominium di Kuching milik bapa responden ('kondominium tersebut'). Menjelang Disember 2020, dua tahun selepas perkahwinan, hubungan antara kedua-dua pihak telah merosot ke tahap di mana responden berpindah dari kondominium tersebut. Pempetisyen kemudiannya memfailkan petisyen perceraian semasa dan notis permohonan untuk relif tambahan vide melalui lampiran 5 ('permohonan tersebut'), memohon perintah interim sementara menunggu pendengaran dan pelupusan petisyen semasa, antara lain, bahawa: (a) pempetisyen berhak untuk kekal dan/atau tinggal di kondominium tersebut; dan (b) pempetisyen berhak menggunakan Kereta Mercedes Benz yang diberikan oleh responden dari tempoh perkahwinan tersebut. Menurut pempetisyen, Kondominium tersebut adalah rumah sepencarian pasangan tersebut sejak awal dan responden telah menyediakan sebuah kereta Mercedes Benz untuk kegunaannya semasa perkahwinan mereka. Responden, sebaliknya, tidak menafikan pasangan tersebut tinggal di kondominium tersebut semasa perkahwinan mereka tetapi menegaskan bahawa kondominium tersebut adalah milik bapa responden. Begitu juga, Mercedes Benz adalah milik sebuah syarikat bernama Bormal Engineering Sdn Bhd ('Bormal Engineering'), di mana ibu bapa responden adalah pengarah. Menurut responden, Mercedes Benz telah disediakan kepada pempetisyen untuk kegunaannya sebagai sebahagian daripada pekerjaan pempetisyen di Bormal Engineering tetapi pempetisyen kini telah meninggalkan Bormal Engineering.

Diputuskan, menolak permohonan tanpa perintah tentang kos:

- (1) Perintah yang dipohon berkenaan dengan kondominium dan Mercedes Benz, bertujuan bukan sahaja untuk memerintahkan responden atau ejen atau pekerjaanya tetapi juga ibu bapa responden kerana kondominium tersebut adalah milik bapa responden dan Mercedes Benz milik Bormal Engineering, syarikat ibu bapa responden. Oleh kerana ibu bapa responden mahupun Bormal Engineering tidak menjadi pihak dalam litigasi semasa, mengikut undang-undang tiada injunksi boleh dikeluarkan terhadap mereka dan sebagai persoalan keadilan, tiada injunksi harus dikeluarkan terhadap bukan pihak (lihat perenggan 21–23).
- (2) Berdasarkan s 78 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976, mahkamah mengasaskan penilaiannya terhadap apa-apa nafkah yang perlu dibayar berdasarkan cara dan keperluan pihak-pihak. Mengenai fakta kes, perkahwinan tersebut adalah tempoh yang agak singkat iaitu dua tahun, tanpa anak. Kedua-dua pempetisyen dan responden adalah profesional, yang bekerja dalam bidang pilihan mereka sebelum berkahwin dan selepas berkahwin (masing-masing kejuruteraan dan perakaunan/cukai). Walaupun pempetisyen terpaksa

- A mencari tempat tinggal dan pengangkutan alternatif, pempetisyen telah menghabiskan masa beberapa tahun di Kuala Lumpur sebagai akauntan cukai yang berpendapatan tidak lebih daripada RM4,580 sebulan dan kerana beliau dapat mengekalkan pendapatannya selama tempoh tersebut, oleh itu, beliau akan dapat melakukan perkara yang sama,
- B dengan pendapatan bulanan sekurang-kurangnya RM4,000 hingga RM5,000 sebulan daripada kerjanya sebagai ejen insurans, yang tinggal di Kuching. Pempetisyen tidak akan 'dibiarkan merempat dan mengemis' dan 'memerlukan sokongan kewangan segera' tanpa nafkah interim daripada responden (lihat perenggan 27, 78, 80–81 & 87).
- C (3) Tidak disebut dalam s 78 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 tentang apa-apa keperluan untuk memberikan nafkah kepada isteri pada tahap yang sama seperti yang wujud semasa perkahwinan. Tambahan pula, tidak ada undang-undang
- D yang menetapkan ibu bapa suami perlu terus memberikan kemurahan hati kepada isteri, walaupun selepas perkahwinan tersebut retak. Berkenaan dengan Mercedes Benz, oleh kerana ia disediakan oleh Bormal Engineering sebagai sebahagian daripada pekerjaan pempetisyen, Mercedes Benz adalah milik Bormal Engineering.
- E Memandangkan kondominium tersebut disediakan oleh bapa atau ibu bapa responden dan kepunyaan bapa responden, dalam keadaan tersebut, mahkamah tidak mahu membuat sebarang perintah nafkah sementara menunggu perbicaraan (perenggan 88–89 & 92).]
- F **Cases referred to**
Agnes Lim Koay Tee v Ang Lai Soon [1992] 2 CLJ Rep 25, HC (refd)
Ananda Dharmalingam v Chantella Honeybee Sargon [2006] 6 MLJ 179, HC (refd)
- G *Kheng Chwee Lian v Wong Tak Thong* [1983] 2 MLJ 320, FC (refd)
Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863; [2008] 4 AMR 159; [2008] 4 CLJ 105, CA (refd)
Lee Ying Ying (P) v Tan Khoon Seng (L) [2017] MLJU 1548; [2017] 1 LNS 1598, HC (refd)
- H *Sreedevi Naidu alp T Sree Ramalu Naidu v Eelasegeran all T Nadarajah & Anor* [2016] 3 MLJ 263; [2016] 6 CLJ 538, CA (refd)
- Legislation referred to**
 Law Reform (Marriage and Divorce) Act 1976 ss 77, 77(1)(a), 78
- I *Yu Ying Ying (Thomas, Shankar Ram & Co Advocates) for the wife petitioner. Liew Sheau Kie (Loke, King, Goh & Partners Advocates) for the husband respondent.*

Alexander Siew JC:**A**

[1] By notice of application for ancillary relief (encl 5) ('the application'), the petitioner applied for the following interim orders:

- (1) That pending the hearing and disposal of this suit the Respondent be ordered to provide the Petitioner with:
- (a) an interim maintenance of RM5,000.00 per month;
- (b) that the Petitioner be entitled to remain and/or stay at her present matrimonial home being a 4-bedroom condominium unit at Riverine Emerald Condominium situated at Unit 20-09, Riverine Emerald Condominium, Jalan Petanak, 93100 Kuching, Sarawak ('Riverine Condominium Unit') which was provided for by the Respondent from the time of the said Marriage on 18.12.2018 or equivalent accommodation up to the trial and final disposal of this action and/or on such terms and conditions to be determined by this Honourable Court; and
- (c) that the Petitioner be entitled to use the said Mercedes Benz Motorcar bearing registration No. QTQ9090 which was provided for by the Respondent from the time of the said Marriage on 18.12.2018 or equivalent vehicle to be provided by the Respondent, up to the trial and final disposal of this action, and/or on such terms and conditions to be determined by this Honourable Court;
- (2) An Order that the Respondent be restrained by himself and/or through his agents and/or servants and/or parents from evicting and/or removing the Petitioner from the present matrimonial home being a 4-bedroom condominium unit at Riverine Emerald Condominium situated at Unit 20-09, Riverine Emerald Condominium, Jalan Petanak, 93100 Kuching, Sarawak ('Riverine Condominium Unit') that was provided for by the Respondent and his parents from the time of the said Marriage on 18.12.2018, without providing suitable alternative accommodation of similar standard to the Petitioner, up to the trial and final disposal of this action and/or on such terms and conditions to be determined by this Honourable Court;
- (3) An Order that the Respondent be restrained by himself and/or through his agents and/or servants and/or parents from taking possession of the said Mercedes Benz Motorcar bearing registration No. QTQ9090 which was provided for by the Respondent from the time of the said Marriage on 18.12.2018 or equivalent vehicle to be provided by the Respondent, up to the trial and final disposal of this action, and/or on such terms and conditions to be determined by this Honourable Court;
- (4) The Respondent be ordered to give to the Petitioner's Advocates within 14 days from this Order the following matters:
- (1) Information regarding all properties owned by the Respondent and/or his agents and/or his nominees from the date of marriage i.e. 18.12.2018 until now;
- (2) Full and true notification regarding all bank accounts which are held

- A** by him together with the relevant statements of accounts;
(3) Full and true notification of pay slips and EA Forms regarding the Respondent's monthly income from his employers and all other sources and annual income tax returns submitted to the Inland Revenue Board of Malaysia from the date of marriage i.e. 18.12.2018 until now; and
- B** (4) Full and true notification regarding all shares which are held by the Respondent and/or his agents and/or his nominees in any company showing the total shares held by him and their current value.
- (5) Parties are at liberty to apply for variation of the order in the event of change of circumstances;
- C** (6) Costs of this application be borne and paid by the Respondent;
(7) Any such further or other order/s and/or relief that this Honourable Court deem proper and fit to grant.
- D** [2] The respondent opposed the application, except for the request for information and documents in prayer No 4 above, which the respondent duly provided to the petitioner.
- E** [3] The court after reviewing the cause papers and written submissions and hearing from learned counsel for the parties, dismissed the application, with no order as to costs.
- BRIEF FACTS
- F** [4] The wife petitioner is an accountant by training, with a Degree in Commerce from Australia National University and accredited as a Certified Practising Accountant or CPA.
- G** [5] The husband respondent is an engineer with a Bachelor of Engineering degree from Monash University.
- [6] The parties were married on 18 December 2018.
- H** [7] There were no children in the marriage.
- [8] After marrying, the parties lived at a condominium in Kuching belonging to the respondent's father ('the condominium').
- I** [9] By December 2020, two years into the marriage, the relationship between the parties had deteriorated to the point where the respondent moved out of the condominium, on 15 December 2020.

[10] The parties failed to reconcile and a year later on 27 December 2021, the petitioner filed the instant Petition and a day later on 28 December 2021, the instant application.

A

CONTENTIONS OF THE PARTIES

B

[11] According to the petitioner, the condominium was the couple's matrimonial home from the start and the respondent had provided a Mercedes Benz motorcar for her use during their marriage ('Mercedes Benz').

[12] The respondent did not deny the couple were living at the condominium during their marriage but stressed the condominium belonged to the respondent's father and according to the respondent, the respondent's parents had allowed the couple to use two bedrooms at the condominium but the parents had kept the master bedroom and another bedroom as well as certain other parts of the condominium for the parents' own use.

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D

[13] According to the respondent, the Mercedes Benz belonged to a company called Bormal Engineering Sdn Bhd ('Bormal Engineering'), of which the respondent's parents were directors.

E

[14] According to the respondent, the Mercedes Benz was provided to the petitioner for her use as part of the petitioner's employment at Bormal Engineering but the petitioner had now left Bormal Engineering (in October 2020).

F

[15] The respondent further contended he had no control over the condominium or the Mercedes Benz.

G

[16] According to the respondent, the petitioner had the qualifications to be gainfully employed, being a qualified accountant and having worked as a Senior Tax Consultant at KPMG in Kuala Lumpur, before being employed as an accountant at Bormal Engineering.

H

[17] The respondent further contended the petitioner had sufficient income from her current position as an insurance agent with Prudential and also sufficient financial assets, to maintain herself.

[18] The petitioner contended otherwise and maintained she was entitled to the same standard of living as had been provided to her previously.

I

A [19] The petitioner further contended the respondent had previously provided her with a supplementary credit card but had cancelled the card subsequently.

B [20] Unsurprisingly, the petitioner and the respondent blamed each other for the breakdown of the marriage, with the respondent even accusing the petitioner of refusing to consummate the marriage, which accusation the petitioner denied vehemently.

C PRELIMINARY POINT

[21] The orders being applied for in respect of the condominium and Mercedes Benz, sought not only to injunct the respondent or his agents or servants but also the respondent's parents.

D [22] It was not disputed the condominium belonged to the respondent's father and the Mercedes Benz belonged to Bormal Engineering, the respondent's parents' company.

E [23] As neither the respondent's parents nor Bormal Engineering were parties to the instant litigation, as a matter of law no injunction could be issued against them (see for example the Federal Court decision in *Kheng Chwee Lian v Wong Tak Thong* [1983] 2 MLJ 320) and as a matter of fairness no injunction should be issued against non-parties.

F [24] Neither should the court issue any orders against property belonging to entities which were not parties to the instant litigation, unless there was evidence to show the property was under the control of one of the parties to the litigation and no or little evidence had been presented to show the respondent having control over the condominium or the Mercedes Benz.

G [25] The question still remained for the consideration of this court, however, whether the court should order the provision of equivalent accommodation and vehicle or the monetary equivalents, as interim maintenance for the petitioner.

H THE LAW

I [26] Sections 77 and 78 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') read as follows:

77 Power for court to order maintenance of spouse.

(1) The court may order a man to pay maintenance to his wife or former wife —

- (a) during the course of any matrimonial proceedings;
- (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
- (c) if, after a decree declaring her presumed to be dead, she is found to be alive.

A

B

(2) The court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order.

C

78 Assessment of maintenance

In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

D

[27] By the express wording of s 78, a court is to base its assessment of any maintenance payable, primarily on three main factors:

E

- (a) the means of the parties;
- (b) the needs of the parties; and
- (c) the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

F

[28] From the word 'primarily' in s 78, the court is not confined to the three factors above, but can take into account other relevant considerations.

G

[29] In *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 AMR 159; [2008] 4 CLJ 105, the Court of Appeal said as follows as regards the phrase 'means and needs of the parties':

In assessing the means and needs of the parties the court has always had regard to the duration of the marriage, whether there were any children of the marriage, the age of the parties, whether the husband had financially supported the wife during the duration of their marriage, the parties earning capabilities and whether the divorce would have affected the husband's position financially.

H

I

[30] Under s 77(1)(a), an order of maintenance may be made 'during the course of any matrimonial proceedings' and this is the provision usually relied upon for an application for interim maintenance pending trial.

- A [31] Such applications for interim maintenance present certain unique challenges for the court.

A 'TRIAL' WITHIN A TRIAL

- B [32] More often than not, what is being sought in the application for interim relief, is also sought as permanent relief in the divorce petition itself.

- C [33] In the instant case, what was being sought in the application, was also sought as permanent relief in the petition.

- [34] The pertinent part of the petition is reproduced below:

47. The Petitioner therefore prays: ...
- D 6. That the Respondent pays the Respondent a monthly maintenance of RM5,000 to maintain the Petitioner in the same standard of living that she was used to during the said Marriage until such time she is re-married;
- E 7. That the Respondent provides accommodation of an equivalent standard to the matrimonial home at Riverine condominium Unit to the Petitioner until such time she is re-married;
8. That the Respondent provides a motor vehicle equivalent to motor vehicle Mercedes Benz registration No. QTQ9090 for the personal use of the Petitioner until such time she is re-married ...

- F [35] So in divorce proceedings where a party applies for maintenance to be paid pending trial, the court would effectively have to make a determination on the issue of maintenance *twice*, firstly upon such an application for interim maintenance and secondly upon the trial.

- G [36] As one of the factors to be considered is 'the degree of responsibility which the Court apportions to each party for the breakdown of the marriage', applications for interim maintenance tend to be vigorously litigated with the parties filing affidavit after affidavit to buttress their version of events leading to the breakdown of the marriage, which versions of events typically will be diametrically different.
- H

- I [37] The legislature could not have intended an application for interim maintenance under s 77(1)(a) to require a 'trial within a trial' upon affidavit evidence on the issue of maintenance, with all the constraints a court would face to evaluate such evidence without an actual trial.

- [38] In the usual divorce proceedings, the assessment by the court of the spousal maintenance payable, if any, is done upon the conclusion of trial, with

the court having heard from the parties and other witnesses on the witness stand including under cross-examination and having reviewed the documents produced at the trial.

A

[39] In interlocutory applications for interim maintenance pending trial, the court is limited to affidavit evidence, usually only of the parties themselves and in terms of documentary evidence, to the documents the parties chose to annex to their affidavits.

B

[40] How then does a court assess the ‘means and needs of the parties’ and the apportioning of responsibility for the breakup of the marriage, in such circumstances, especially when the affidavit evidence is conflicting?

C

[41] Some courts have even declined to grant applications for interim maintenance on the grounds that the assessment would require the court to apportion responsibility for the breakup of the marriage but the court could only do so after a trial; see for example *Lee Ying Ying (P) v Tan Khoon Seng (L)* [2017] MLJU 1548; [2017] 1 LNS 1598.

D

[42] This court is of the view that in an application for interim maintenance, should the affidavit evidence be conflicting, the court should refrain from making conclusive findings on the conflicting evidence but proceed to consider the question whether, in the circumstances, the husband should be ordered to pay a certain amount to the wife, pending the determination of how much maintenance is payable, if any, at the trial.

E

F

[43] Every case will have its own set of circumstances and the court will have to determine, in the circumstances of the case, whether it is fair and just to order the husband to pay the wife some money as maintenance pending the trial and if so, how much.

G

[44] At the conclusion of the trial, when the court decides on the issue of maintenance, consequential orders can be made relating to the previous order for interim maintenance, for example an order for the wife to refund the amounts paid if the court ultimately decides no maintenance is payable.

H

[45] In *Sreedevi Naidu a/p T Sree Ramalu Naidu v Eelasegeran a/l T Nadarajah & Anor* [2016] 3 MLJ 263; [2016] 6 CLJ 538, the High Court had dismissed the wife petitioner’s application for interim maintenance, in part on the grounds that the court would first have to decide on the allegation of adultery against the husband respondent.

I

[46] On appeal, the Court of Appeal allowed the appeal on this point and

A said:

[21] We associate ourselves with the decision of the Court of Appeal in *Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo* that the High Court has the jurisdiction to grant interim maintenance during the course of matrimonial proceedings. We do not think that it is necessary for the court to decide the issue of whether the alleged adulterous relationship between the first and second respondents led to the breakdown of the marriage before considering the question whether the petitioner wife is entitled to any interim maintenance. What is in issue is whether in all the circumstances, the petitioner wife should be left high and dry without any interim maintenance pending the matrimonial proceedings. We think not. As such, the court shall now consider the means and needs of the parties based on the affidavit evidence.

[47] The Court of Appeal did not grant the wife petitioner the amount applied for but a lesser amount and said:

D At any rate, after the hearing of the petition the High Court will be the final arbiter of the amount of the maintenance to be awarded to the petitioner wife, if any.

[48] The Court of Appeal also cited *Koay Cheng Eng* as to the factors to be considered on ‘the means and needs of the parties’ :

E ... In assessing the means and needs of the parties, the court has always had regard to the following factors:

- (a) the duration of the marriage;
- F (b) whether there are any children of the marriage, the age of the parties;
- (c) whether the husband had financially supported the wife during the subsistence of the marriage;
- (d) the parties earning capabilities; and
- G (e) whether the divorce would have affected the husband’s position financially.

(see *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105 (CA)).

H [49] A not dissimilar approach was taken in *Agnes Lim Koay Tee v Ang Lai Soon* [1992] 2 CLJ Rep 25 by Richard Malanjum JC (as he then was), where the learned judicial commissioner in dismissing the application for interim maintenance held:

I With respect to the learned counsel for the wife-petitioner I do not think that just because there is a pending matrimonial proceeding it is a matter of right that the wife-petitioner should get maintenance pending suit. Such a submission is contrary to the obvious discretionary power given to court by s 77 of the said Act. The crucial factor to consider by the court in exercising its discretion to allow payment of maintenance pending suit is the immediate need of the applicant. See: *Waller v*

- Waller* [1956] 2 All ER 234; *Peacock v Peacock* [1984] 1 All ER 1069 *Corbett v Corbett* [1970] 2 All ER 654. In this case the wife-petitioner must show that she is in immediate need of financial support from the husband-respondent. A
- On reading the affidavit in support filed by the wife-petitioner I am not satisfied that she is in fact in immediate need of financial support. All she has stated is that she has been accustomed to a life of ease and affluence and therefore entitled to live in such a manner. It is obvious from this statement that the wife-petitioner is not so much in immediate need of financial support but more to maintain her life style which she claims to have been accustomed to. B
- ‘MEANS AND NEEDS OF THE PARTIES’ C
- Duration of the marriage*
- [50] The parties married in December 2018. D
- [51] As has been set out earlier, the marriage was effectively over by December 2020 when the respondent moved out of the condominium.
- [52] Thus the marriage had lasted two years. E
- Any children of the marriage*
- [53] There were no children in the marriage. F
- [54] According to the respondent, the petitioner had refused to consummate the marriage; the petitioner denied this allegation.
- Age of the parties* G
- [55] The petitioner was born in 1990 which means she was 28 at the time of marriage in December 2018, and 30 when the marriage effectively ended in December 2020. H
- [56] The respondent was born in 1987 which means he was 31 at the time of marriage and 33 when the marriage broke down.
- Whether husband had supported the wife during the marriage* I
- [57] According to the petitioner, the condominium and the Mercedes Benz were provided by the respondent.

- A [58] According to the respondent, the condominium belonged to the father and his parents had allowed them the use of two bedrooms, with the parents keeping the master bedroom and another bedroom and the parents maintaining the parents' things in the condominium.
- B [59] It was not disputed the condominium belonged to the respondent's father.
- [60] It was also not disputed the Mercedes Benz belonged to Bormal Engineering, the petitioner's former employer.
- C [61] The respondent admitted he had allowed the petitioner the use of a supplementary credit card, which the respondent subsequently cancelled.
- D [62] However, according to the respondent, the supplementary credit card was meant for the couple's household expenses and the respondent cancelled the card after the petitioner started abusing the card following the break up; the petitioner denied abusing the card.
- E *Parties earning capabilities*
- [63] The petitioner had a Degree of Commerce from Australia National University, graduating in 2012.
- F [64] She was professionally accredited as a Certified Practising Accountant or CPA.
- [65] From June 2013, she worked as a tax consultant at an accounting firm in Kuching.
- G [66] In December 2015, she moved to Kuala Lumpur to work as a tax consultant at a leading accounting firm, KPMG.
- H [67] In September 2018, the respondent resigned from her then position of senior tax consultant with KPMG Kuala Lumpur and moved back to Kuching.
- [68] The petitioner subsequently in January 2019 took up a position as accountant at Bormal Engineering.
- I [69] Her pay at KPMG Kuala Lumpur before she left was RM4,580 per month.
- [70] She was paid slightly above that at Bormal Engineering.

[71] After the break up, the petitioner became an insurance agent with Prudential Assurance. A

[72] According to the respondent and there was documentary evidence to indicate, the petitioner did well as an insurance agent, earning over RM9,000 per month in some months, with 2021 earnings exceeding RM50,000. B

[73] The respondent also alleged the petitioner had ample financial assets, including over RM90,000 deposited with banks. C

[74] As for the respondent, he worked for Bormal Engineering, with a gross monthly salary of RM10,960 and take home pay of RM8,460 per month. D

[75] According to the respondent, he did not own any real property or vehicle. D

ANALYSIS OF THE COURT

[76] From the material before the court, it would appear the petitioner was generating at least RM4,000 to RM5,000 income a month from her work as an insurance agent. E

[77] This was about the same amount the petitioner was earning at Bormal Engineering and at KPMG, Kuala Lumpur. F

[78] No doubt if the condominium and the Mercedes Benz were returned to the respective owners, the petitioner would then have to get alternative accommodation and means of transport. G

[79] The respondent had returned to stay with his parents and it was not clear to the court whether the petitioner had the option to likewise stay with her family, at least pending the trial. G

[80] The court took particular note that the petitioner had spent some years in Kuala Lumpur as a tax accountant earning not more than RM4,580 per month and she was apparently able to maintain herself on such income during such period. H

[81] Kuching would probably not be more expensive than Kuala Lumpur in terms of costs of living and if the petitioner could live in Kuala Lumpur on RM4,500 a month, presumably she could live on that amount in Kuching. I

- A [82] Learned counsel for the petitioner submitted the petitioner was entitled to the same standard of living as was afforded to her prior to the break up.
- [83] There is no mention in s 78 about any requirement to maintain a wife to the same standard as existed during the marriage.
- B
- [84] In some cases, courts after full trial have granted maintenance orders to restore the wife to the previous standard of living, but invariably these were cases where the marriage was of decades long duration and where the wife had sacrificed her own career and stayed at home to raise the children of the marriage only to see the husband, now successful and wealthy in part due to the sacrifices of the wife, eloped with another woman at the end of it all.
- C
- [85] In those cases, it was only fair for the wife not to be deprived of the standard of living she had been accustomed to and which was partly the result of her sacrifices and toil.
- D
- [86] The facts of the instant case, on the material before the court, were much different from the facts of those cases.
- E
- [87] This was a marriage of relatively short duration, two years, with no children, of two professionals, who worked in their chosen field before marriage and after getting married (engineering and accounting/tax respectively).
- F
- [88] The Mercedes Benz belonged to Bormal Engineering and the condominium belonged to the respondent's father.
- G
- [89] In respect of the Mercedes Benz, the inference could be drawn it was provided by Bormal Engineering as part of the petitioner's employment and in respect of the condominium, it would not be unreasonable to submit it was provided by the father or parents of the respondent.
- H
- [90] There is no law that stipulates the parents of a husband have to continue to extend their generosity to the wife, even after the marriage has broken down.
- [91] In the words of the learned judge in *Ananda Dharmalingam v Chantella Honeybee Sargon* [2006] 6 MLJ 179:
- I ... The wife makes extensive reference to the alleged wealth of the husband's family. An examination of her own allegations at para 5 of her affidavit in support of the application quite clearly acknowledges that the properties belong to the husband's parents and the husband's mother's family company, that is properties belonging to the husband's mother's siblings. None of this wealth belongs to the husband. Even

by the wife's own account, the husband has always lived in his parents' home and had his expenses met by his parents in their home and not separately. I think the husband's parents' station in life cannot be ascribed to the husband. The fact of the matter is that the husband does not and never had the means to pay for the children to attend school at Alice Smith. Both parties have said and it is a fact that the husband's parents were the ones who paid for the children's school fees at Alice Smith. On the facts, the husband's parents had good reason and just cause to withdraw their generosity ... The parents have no legal obligations in the first place to pay for the school fees. There is no such obligation in our law. They cannot, by reason of their generosity in the past, be now bestowed with such a legal obligation whether directly or indirectly ...

A

B

C

[92] The upshot, after considering all of the above, was that the court was disinclined to make any order of interim maintenance pending trial.

[93] The court did not think the petitioner would be 'left high and dry' without interim maintenance and the court did not find the petitioner to be 'in immediate need of financial support' from the respondent.

D

[94] Trial is scheduled to commence in April 2023.

E

[95] At the trial, the parties will have their day in court, their witnesses will likewise have the opportunity to testify, opposing learned counsel will be at liberty to cross-examine, documents will be tendered, learned counsel will make submissions on the evidence adduced, the court will adjourn to reflect on the evidence and submissions and in due course decide on the issues before the court, including whether the respondent has to provide spousal maintenance to the petitioner and if so, in what form and how much.

F

Application dismissed.

G

Reported by K Selvaraju

H

I